

REFERENCE TITLE: environmental policy act

State of Arizona
House of Representatives
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Second Regular Session
2008

HB 2296

Introduced by
Representatives Sinema, Ableser, Campbell CH, Lujan: Bradley, Gallardo,
Lopes, Meza, Prezelski

AN ACT

AMENDING TITLE 49, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING
TO ENVIRONMENTAL POLICY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 49, Arizona Revised Statutes, is amended by adding
3 chapter 10, to read:

4 CHAPTER 10

5 ENVIRONMENTAL POLICY

6 ARTICLE 1. GENERAL PROVISIONS

7 49-1401. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "AGENCY" MEANS AN ADMINISTRATIVE DIVISION OF THIS STATE THAT IS
10 HEADED BY A PERSON, BOARD OR COMMISSION THAT IS APPOINTED BY THE GOVERNOR.

11 2. "AGENCY ACTION" OR "PROPOSED AGENCY ACTION" MEANS AN ACTION THAT IS
12 ANY OF THE FOLLOWING:

13 (a) UNDERTAKEN DIRECTLY BY AN AGENCY.

14 (b) UNDERTAKEN BY A PERSON OTHER THAN AN AGENCY AND SUPPORTED BY A
15 GRANT, SUBSIDY, LOAN OR OTHER FORM OF FINANCIAL ASSISTANCE FROM AN AGENCY.

16 (c) APPROVED OR PERMITTED BY AN AGENCY.

17 3. "LEAD AGENCY" MEANS THE AGENCY THAT HAS THE PRIMARY STATUTORY
18 RESPONSIBILITY FOR APPROVAL OF ANY PROPOSED AGENCY ACTION THAT INVOLVES MORE
19 THAN ONE AGENCY.

20 4. "SIGNIFICANT IMPACT ON THE ENVIRONMENT" MEANS A SUBSTANTIAL OR
21 POTENTIALLY SUBSTANTIAL ADVERSE CHANGE IN ANY OF THE PHYSICAL CONDITIONS IN
22 THE AREAS AFFECTED BY THE AGENCY ACTION, INCLUDING LAND, AIR, WATER, FLORA,
23 FAUNA, AMBIENT NOISE AND OBJECTS OF HISTORIC OR VISUAL SIGNIFICANCE.

24 49-1402. State clearinghouse; notices; other documents

25 A. A STATE CLEARINGHOUSE FOR NOTICES REQUIRED BY THIS CHAPTER IS
26 ESTABLISHED IN THE DEPARTMENT OF COMMERCE AS AN ADJUNCT TO THE CENTRAL
27 DOCUMENT REPOSITORY THAT IS DESIGNATED AS THE A-95 CLEARINGHOUSE FOR THE
28 DISTRIBUTION OF DOCUMENTS INVOLVING THE NATIONAL ENVIRONMENTAL POLICY ACT OF
29 1969. THE DEPARTMENT OF COMMERCE SHALL MAINTAIN THE STATE CLEARINGHOUSE AND
30 SHALL MAKE AVAILABLE FOR PUBLIC INSPECTION DURING NORMAL BUSINESS HOURS ALL
31 NOTICES SENT TO THE STATE CLEARINGHOUSE PURSUANT TO THIS CHAPTER.

32 B. ALL DOCUMENTS PREPARED PURSUANT TO THIS CHAPTER OTHER THAN NOTICES
33 THAT ARE REQUIRED TO BE SENT TO THE STATE CLEARINGHOUSE SHALL BE RETAINED IN
34 THE OFFICE OF THE LEAD AGENCY AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION
35 DURING NORMAL BUSINESS HOURS.

36 49-1403. Notice; form

37 A NOTICE REQUIRED PURSUANT TO THIS CHAPTER SHALL CONTAIN AT LEAST THE
38 FOLLOWING:

39 1. A BRIEF DESCRIPTION OF THE PROPOSED AGENCY ACTION, INCLUDING THE
40 GEOGRAPHIC LOCATION, THE TIME FRAME AND A LIST OF ALL OTHER AGENCIES
41 INVOLVED.

42 2. THE NAME, TITLE AND TELEPHONE NUMBER OF THE PRINCIPAL PROJECT
43 LEADER IN THE LEAD AGENCY FOR THAT PROPOSED AGENCY ACTION.

44 3. ANY APPROPRIATE CROSS-REFERENCES REGARDING THE PROPOSED AGENCY
45 ACTION.

49-1404. Lead agency

A. THE LEAD AGENCY RETAINS THE FINAL AGENCY AUTHORITY FOR REVIEW AND ACCEPTANCE OF ANY ENVIRONMENTAL REVIEW DOCUMENTS PRESCRIBED BY THIS CHAPTER.

B. IN THE CASE OF A CONFLICT BETWEEN AGENCIES REGARDING THE DESIGNATION OF THE LEAD AGENCY, THE GOVERNOR SHALL DETERMINE THE LEAD AGENCY.

49-1405. Expenses of compliance

A. THE APPLICANT SHALL BEAR THE COSTS FOR THE PREPARATION OF APPLICATIONS, ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS OR OTHER TASKS REQUIRED TO BE PERFORMED BY THE APPLICANT PURSUANT TO THIS CHAPTER.

B. THE AGENCY SHALL BEAR THE COSTS TO THE AGENCY FOR THE REVIEW OF DOCUMENTS OR OTHER AGENCY ACTIONS REQUIRED BY THIS CHAPTER, AND THE COSTS SHALL NOT BE CHARGED TO THE APPLICANT.

C. FOR ACTIONS INVOLVING MORE THAN ONE AGENCY, THE LEAD AGENCY SHALL BEAR THE COSTS FOR COMPLIANCE WITH THIS CHAPTER.

49-1406. Judicial review of agency actions

A. AN AGENCY DECISION MADE PURSUANT TO THIS CHAPTER IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6 ONLY AFTER THE AFFECTED PERSON HAS EXHAUSTED THE LEAD AGENCY'S ADMINISTRATIVE REMEDIES.

B. AN AGENCY DETERMINATION THAT IS MADE BY RULE IS SUBJECT TO JUDICIAL REVIEW AS PRESCRIBED IN TITLE 41, CHAPTER 6.

C. NOTWITHSTANDING ANY OTHER LAW, A PERSON FILING AN ACTION UNDER TITLE 12, CHAPTER 7, ARTICLE 6 TO APPEAL AN AGENCY DECISION UNDER THIS CHAPTER IS REQUIRED TO JOIN AS A DEFENDANT ONLY THE LEAD AGENCY. AGENCIES OTHER THAN THE LEAD AGENCY AND OTHER PERSONS MAY INTERVENE AS OTHERWISE PERMITTED BY LAW.

49-1407. Applicability to political subdivisions; effective date

BEGINNING JULY 1, 2010, COUNTIES, CITIES, TOWNS AND SPECIAL TAXING DISTRICTS MAY ESTABLISH FOR THEIR JURISDICTIONS THE PROGRAM ESTABLISHED BY THIS CHAPTER, MAY ESTABLISH A SIMILAR PROGRAM, MAY ESTABLISH THEIR OWN ENVIRONMENTAL REVIEW PROGRAM OR MAY PERFORM ENVIRONMENTAL REVIEWS ON A CASE-BY-CASE BASIS. ANY ENVIRONMENTAL REVIEW BY A POLITICAL SUBDIVISION SHALL BE STRUCTURED TO AVOID DUPLICATION WITH ANY OTHER LOCAL, STATE OR FEDERAL ENVIRONMENTAL REVIEW.

ARTICLE 2. ENVIRONMENTAL IMPACT REVIEW

49-1421. Outline; categories of further review

A. A PERSON WHO IS AN APPLICANT FOR AN AGENCY ACTION SHALL SUBMIT AN OUTLINE TO THE AGENCY OF THE PROPOSED AGENCY ACTION FOR THE PURPOSE OF DETERMINING WHETHER THE PROPOSED AGENCY ACTION IS SUBJECT TO REVIEW UNDER THIS CHAPTER. THE AGENCY SHALL DETERMINE THE FORMAT OF THE OUTLINE.

B. WITHIN THIRTY DAYS AFTER RECEIVING THE APPLICANT'S COMPLETE AND CORRECT OUTLINE, THE AGENCY SHALL DETERMINE WHICH OF THE FOLLOWING CATEGORIES OF REVIEW APPLY TO THE PROPOSED ACTION AND SHALL NOTIFY THE APPLICANT:

1 1. THE ACTION IS STATUTORILY EXEMPT FROM THIS CHAPTER AS PRESCRIBED IN
2 SECTION 49-1428 AND NO FURTHER REVIEW IS REQUIRED UNDER THIS CHAPTER.

3 2. THE ACTION IS UNCONDITIONALLY EXEMPT BY RULE FROM THIS CHAPTER AS
4 PRESCRIBED BY SECTION 49-1429, PARAGRAPH 1 AND NO FURTHER REVIEW IS REQUIRED
5 UNDER THIS CHAPTER.

6 3. THE ACTION IS CONDITIONALLY EXEMPT BY RULE FROM THIS CHAPTER AS
7 PRESCRIBED BY SECTION 49-1429, PARAGRAPH 2. THE APPLICANT SHALL COMPLY WITH
8 SECTION 49-1423.

9 4. THE ACTION IS INCLUDED IN THIS CHAPTER BY STATUTE AS PRESCRIBED BY
10 SECTION 49-1431. THE APPLICANT SHALL COMPLY WITH SECTION 49-1422.

11 5. THE ACTION IS INCLUDED IN THIS CHAPTER BY RULE AS PRESCRIBED BY
12 SECTION 49-1430. THE APPLICANT SHALL COMPLY WITH SECTION 49-1422.

13 6. THE ACTION IS AN UNLISTED ACTION THAT IS NOT INCLUDED IN PARAGRAPHS
14 1 THROUGH 5. THE APPLICANT SHALL COMPLY WITH SECTION 49-1423.

15 49-1422. Environmental assessments; notice

16 A. IF AN AGENCY DETERMINES THAT THE PROPOSED ACTION IS INCLUDED BY
17 STATUTE OR INCLUDED BY RULE IN THIS CHAPTER, THE AGENCY SHALL NOTIFY THE
18 APPLICANT AND THE STATE CLEARINGHOUSE THAT AN ENVIRONMENTAL ASSESSMENT IS
19 REQUIRED. THE AGENCY SHALL PROVIDE FOR A THIRTY DAY PERIOD TO RECEIVE
20 WRITTEN COMMENTS ON THE APPLICATION FROM MEMBERS OF THE PUBLIC AND FROM OTHER
21 AGENCIES. PUBLIC COMMENTS SHALL BE SUBMITTED TO THE AGENCY.

22 B. THE APPLICANT SHALL PREPARE THE ENVIRONMENTAL ASSESSMENT OF THE
23 PROPOSED ACTION, WHICH SHALL BE USED BY THE AGENCY TO DETERMINE WHETHER THE
24 PROPOSED ACTION MAY HAVE POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS, AND
25 SHALL SUBMIT IT TO THE AGENCY. ON RECEIPT OF THE ENVIRONMENTAL ASSESSMENT,
26 THE AGENCY SHALL NOTIFY THE STATE CLEARINGHOUSE AND SHALL PROVIDE FOR A
27 THIRTY DAY PERIOD TO RECEIVE WRITTEN COMMENTS ON THE ENVIRONMENTAL ASSESSMENT
28 FROM MEMBERS OF THE PUBLIC.

29 49-1423. Unlisted actions; actions conditionally exempt by
30 rule; checklist

31 FOR AN ACTION THAT IS AN UNLISTED ACTION AS PRESCRIBED IN SECTION
32 49-1421 AND FOR AN ACTION THAT IS CONDITIONALLY EXEMPT BY RULE AS PRESCRIBED
33 BY SECTION 49-1429, PARAGRAPH 2, THE FOLLOWING PROCEDURES APPLY:

34 1. ON RECEIPT OF THE COMPLETE AND CORRECT OUTLINE, THE AGENCY SHALL
35 NOTIFY THE STATE CLEARINGHOUSE AND SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR
36 RECEIVING WRITTEN COMMENTS ON THE APPLICATION.

37 2. THE AGENCY SHALL REVIEW THE APPLICANT'S OUTLINE FOR THE PROPOSED
38 AGENCY ACTION BY USING A CHECKLIST OF THRESHOLD CRITERIA TO IDENTIFY THOSE
39 PROPOSED AGENCY ACTIONS THAT MAY HAVE A SIGNIFICANT IMPACT ON THE
40 ENVIRONMENT.

41 3. WITHIN THIRTY DAYS AFTER RECEIVING THE OUTLINE, THE AGENCY SHALL
42 COMPLETE ITS REVIEW OF THE OUTLINE AND SHALL DETERMINE WHETHER MORE
43 INFORMATION IS REQUIRED FROM THE APPLICANT OR WHETHER THE AGENCY HAS ADEQUATE
44 INFORMATION FROM THE APPLICANT AND THE PUBLIC TO ISSUE ITS FINDINGS.

1 4. WITHIN THIRTY DAYS AFTER RECEIVING ANY ADDITIONAL INFORMATION FROM
2 THE APPLICANT, THE LEAD AGENCY SHALL ISSUE ITS FINDINGS.

3 49-1424. Findings; conditions; notice

4 A. AFTER REVIEWING THE APPLICANT'S OUTLINE AS PRESCRIBED BY SECTION
5 49-1423 ON THE ENVIRONMENTAL ASSESSMENT PREPARED AS PRESCRIBED BY SECTION
6 49-1422 AND ANY COMMENTS RECEIVED ON THE PROPOSED AGENCY ACTION, THE AGENCY
7 SHALL ISSUE ONE OF THE FOLLOWING:

8 1. A FINDING THAT NO SIGNIFICANT IMPACT ON THE ENVIRONMENT WILL RESULT
9 FROM THE AGENCY ACTION AS PROPOSED. IF THE AGENCY ISSUES THIS FINDING, THE
10 PROPOSED ACTION IS EXEMPT FROM FURTHER REVIEW AS PROVIDED IN SECTIONS 49-1425
11 AND 49-1426 AND THE PROPOSED AGENCY ACTION MAY PROCEED.

12 2. A CONDITIONAL FINDING THAT NO SIGNIFICANT IMPACT WILL RESULT FROM
13 THE AGENCY ACTION AS PROPOSED, BASED ON THE AGENCY'S DETERMINATIONS OF THE
14 APPROPRIATE CONDITIONS. THESE CONDITIONS MAY INCLUDE MANDATORY MITIGATION OF
15 POTENTIAL ENVIRONMENTAL IMPACTS. IF THE AGENCY SUBSEQUENTLY DETERMINES THAT
16 THE APPLICANT HAS COMPLIED WITH THE CONDITIONS OF THE AGENCY'S FINDING, THE
17 PROPOSED ACTION IS EXEMPT FROM FURTHER REVIEW AS PROVIDED IN SECTIONS 49-1425
18 AND 49-1426 AND THE PROPOSED AGENCY ACTION MAY PROCEED.

19 3. A FINDING OF A POTENTIAL SIGNIFICANT ENVIRONMENTAL IMPACT RESULTING
20 FROM THE AGENCY ACTION. IF THE AGENCY ISSUES THIS FINDING, THE APPLICANT
21 SHALL COMPLY WITH SECTIONS 49-1425 AND 49-1426.

22 B. THE AGENCY SHALL SEND NOTICE OF ITS FINDINGS TO THE STATE
23 CLEARINGHOUSE.

24 49-1425. Draft environmental impact statements; notice; hearing

25 A. IF AN AGENCY ISSUES A FINDING OF A POTENTIAL SIGNIFICANT
26 ENVIRONMENTAL IMPACT PURSUANT TO SECTION 49-1424, THE AGENCY SHALL PROVIDE
27 FOR A THIRTY DAY PERIOD FOR PUBLIC COMMENT REGARDING THE SCOPE OF THE
28 ENVIRONMENTAL IMPACT STATEMENT AND SHALL SOLICIT ADDITIONAL COMMENT FROM
29 OTHER AGENCIES.

30 B. THE AGENCY MAY HOLD A PUBLIC HEARING REGARDING THE SCOPE OF THE
31 ENVIRONMENTAL IMPACT STATEMENT.

32 C. THE APPLICANT SHALL PREPARE A DRAFT ENVIRONMENTAL IMPACT STATEMENT
33 THAT CONTAINS INFORMATION SIMILAR TO THE INFORMATION PRESCRIBED IN SECTION
34 49-1426 AND SUBMIT IT TO THE AGENCY FOR REVIEW. ON RECEIPT OF THE DRAFT
35 ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY SHALL NOTIFY THE STATE
36 CLEARINGHOUSE AND SHALL PROVIDE FOR A THIRTY DAY PERIOD TO RECEIVE WRITTEN
37 COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT.

38 D. THE AGENCY MAY HOLD A PUBLIC HEARING FOR COMMENTS ON THE DRAFT
39 ENVIRONMENTAL IMPACT STATEMENT DURING THE THIRTY DAY PERIOD PRESCRIBED IN
40 SUBSECTION C OF THIS SECTION.

41 49-1426. Final environmental impact statements; notice; effect

42 A. AFTER RECEIVING ALL COMMENTS REGARDING THE DRAFT ENVIRONMENTAL
43 IMPACT STATEMENT, THE APPLICANT SHALL PREPARE A FINAL ENVIRONMENTAL IMPACT
44 STATEMENT THAT ADDRESSES ALL COMMENTS RECEIVED REGARDING THE DRAFT
45 ENVIRONMENTAL IMPACT STATEMENT.

1 B. THE FINAL ENVIRONMENTAL IMPACT STATEMENT SHALL CONTAIN AT LEAST THE
2 FOLLOWING:

- 3 1. A COVER SHEET, SUMMARY STATEMENT AND TABLE OF CONTENTS.
- 4 2. A DETAILED DESCRIPTION OF THE PROPOSED ACTION.
- 5 3. A DESCRIPTION OF THE PURPOSE AND NEED FOR THE PROPOSED ACTION.
- 6 4. A DETAILED DESCRIPTION OF REASONABLE ALTERNATIVES TO THE PROPOSED
7 ACTION, INCLUDING THE ALTERNATIVE OF NO ACTION.
- 8 5. A DESCRIPTION OF THE AFFECTED ENVIRONMENT, INCLUDING A NONTECHNICAL
9 DESCRIPTION OF THE PHYSICAL LOCATION OF THE AFFECTED ENVIRONMENT.
- 10 6. A DESCRIPTION OF THE PROPOSED ACTION'S ENVIRONMENTAL CONSEQUENCES
11 AND CONSTRAINTS THAT ADDRESSES THE FOLLOWING, IF RELEVANT:
 - 12 (a) NATURAL RESOURCES, INCLUDING:
 - 13 (i) GEOLOGY.
 - 14 (ii) WATER RESOURCES.
 - 15 (iii) AIR RESOURCES.
 - 16 (iv) TERRESTRIAL AND AQUATIC ECOLOGY.
 - 17 (v) AGRICULTURE RESOURCES.
 - 18 (b) ENVIRONMENTAL CONSTRAINTS.
 - 19 (c) CULTURAL RESOURCES.
 - 20 (d) PUBLIC HEALTH.
 - 21 (e) USE AND CONSERVATION OF ENERGY.
 - 22 (f) IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES.
 - 23 (g) CUMULATIVE ENVIRONMENTAL IMPACTS.
 - 24 (h) ADVERSE ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED.

25 C. ON RECEIVING THE FINAL ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY
26 SHALL NOTIFY THE STATE CLEARINGHOUSE OF ITS RECEIPT AND SHALL PROVIDE FOR A
27 THIRTY DAY PERIOD TO RECEIVE PUBLIC COMMENTS ON THE FINAL ENVIRONMENTAL
28 IMPACT STATEMENT.

29 D. AFTER REVIEWING THE FINAL ENVIRONMENTAL IMPACT STATEMENT AND ANY
30 PUBLIC COMMENTS, THE AGENCY SHALL ISSUE A DECISION ON WHETHER TO PROCEED WITH
31 THE PROPOSED AGENCY ACTION AND SHALL NOTIFY THE STATE CLEARINGHOUSE OF ITS
32 DECISION.

33 E. NOTHING IN AN ENVIRONMENTAL IMPACT STATEMENT PREPARED AS PRESCRIBED
34 BY THIS SECTION REQUIRES THE DENIAL OR MODIFICATION OF THE PROPOSED AGENCY
35 ACTION.

36 49-1427. Supplemental environmental impact statement;
37 definition

38 IF A FINAL ENVIRONMENTAL IMPACT STATEMENT IS PREPARED FOR A PROPOSED
39 AGENCY ACTION AS PRESCRIBED BY THIS ARTICLE, A SUPPLEMENTAL ENVIRONMENTAL
40 IMPACT STATEMENT IS REQUIRED ONLY IF EITHER OF THE FOLLOWING CIRCUMSTANCES
41 OCCURS:

- 42 1. SUBSTANTIAL CHANGES TO THE AGENCY ACTION ARE PROPOSED AFTER
43 SUBMITTAL OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT, INCLUDING AN
44 INDIVIDUAL PROPOSED AGENCY ACTION THAT IS WITHIN A PROGRAM-WIDE ENVIRONMENTAL
45 IMPACT STATEMENT AS PRESCRIBED BY SECTION 49-1433, BUT THAT MAY HAVE A

1 SIGNIFICANT IMPACT ON THE ENVIRONMENT THAT WAS NOT INCLUDED IN THE
2 PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT.

3 2. AT THE DISCRETION OF THE DIRECTOR OF THE LEAD AGENCY, NEW
4 INFORMATION BECOMES AVAILABLE REGARDING EITHER THE ENVIRONMENTAL EFFECTS OF
5 THE PROPOSED AGENCY ACTION OR THE AGENCY'S EXERCISE OF AUTHORITY OVER THE
6 PROPOSED AGENCY ACTION.

7 49-1428. Exemptions by statute

8 THE FOLLOWING TYPES OF PROPOSED AGENCY ACTIONS OR FACILITIES ARE EXEMPT
9 FROM THIS CHAPTER:

10 1. ACTIONS SUBJECT TO THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 OR
11 PERMITS ISSUED UNDER SECTION 404 OF THE CLEAN WATER ACT AS DEFINED IN SECTION
12 49-201.

13 2. AGENCY RULE MAKING.

14 3. OFFICIAL ACTS OF A MINISTERIAL NATURE THAT INVOLVE NO EXERCISE OF
15 DISCRETION.

16 4. EMERGENCY ACTIONS IN RESPONSE TO THREATS TO PUBLIC HEALTH OR
17 SAFETY.

18 5. ACTIONS AUTHORIZED BY AN AGENCY BEFORE JULY 1, 2009.

19 6. ACTIONS TAKEN ON AN APPLICATION SUBMITTED BY A PRIVATE ENTITY TO AN
20 AGENCY BEFORE JULY 1, 2009.

21 7. INFORMATION COLLECTION, INCLUDING RESEARCH, ENVIRONMENTAL QUALITY
22 AND POLLUTION STUDIES, TRAFFIC COUNTS, MAPPING, ENGINEERING STUDIES, SURVEYS
23 AND SOILS AND SUBSURFACE INVESTIGATIONS, IF THE COLLECTION OF THIS
24 INFORMATION DOES NOT COMMIT THE AGENCY TO UNDERTAKE, FUND OR APPROVE ANY
25 ACTIONS THAT ARE SUBJECT TO THIS CHAPTER.

26 8. LEGISLATIVE PROPOSALS.

27 9. LITIGATION RELATED ACTIVITIES, INCLUDING DECISIONS TO INITIATE,
28 SETTLE OR TERMINATE ACTIONS, DECISIONS TO APPEAL ACTIONS AND ANY ACTIONS
29 UNDERTAKEN PURSUANT TO COURT ORDER.

30 10. ADMINISTRATIVE ENFORCEMENT ACTIONS.

31 11. REPLACEMENT OF A FACILITY, IN KIND, ON THE SAME SITE.

32 12. CONSTRUCTION OF MINOR STRUCTURES ACCESSORY OR APPURTENANT TO
33 EXISTING FACILITIES.

34 13. MAINTENANCE OR REPAIR INVOLVING NO SUBSTANTIAL CHANGES IN AN
35 EXISTING STRUCTURE, FACILITY OR ROADWAY.

36 14. RENEWAL OF A LICENSE, LEASE OR PERMIT OR TRANSFER OF OWNERSHIP OF A
37 LICENSE, LEASE OR PERMIT IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

38 (a) THERE IS NO MATERIAL CHANGE IN PERMIT CONDITIONS.

39 (b) THERE IS NO CHANGE IN THE SCOPE OF PERMITTED ACTIVITIES.

40 (c) THERE HAVE BEEN NO VIOLATIONS OF THE LICENSE, LEASE OR PERMIT
41 CONDITIONS THAT MAY HAVE CAUSED A SIGNIFICANT IMPACT ON THE ENVIRONMENT
42 DURING THE TERM OF THE LICENSE, LEASE OR PERMIT.

43 (d) THERE IS NO DOCUMENTED RECORD OF NEW UNRESOLVED ENVIRONMENTAL
44 PROBLEMS REGARDING THE LICENSE, LEASE OR PERMIT.

1 15. ELECTRIC GENERATION, DISTRIBUTION AND SUBTRANSMISSION FACILITIES
2 OTHER THAN THOSE PRESCRIBED BY TITLE 40, CHAPTER 2, ARTICLE 6.2.

3 16. MANAGEMENT PLANS ADOPTED OR MODIFIED PURSUANT TO TITLE 45, CHAPTER
4 2, ARTICLE 9, EXCEPT FOR AUGMENTATION AND AUGMENTATION ASSISTANCE.

5 17. REQUESTS FOR VARIANCE FROM A MANAGEMENT PLAN AS PRESCRIBED BY
6 SECTION 45-574 AND REQUESTS FOR ADMINISTRATIVE REVIEW OF A MANAGEMENT PLAN AS
7 PRESCRIBED BY SECTION 45-575.

8 18. APPROVAL OF DAM CONSTRUCTION PLANS PURSUANT TO TITLE 45, CHAPTER 6,
9 INCLUDING PLANS FOR ENLARGEMENT OR MODIFICATION OF DAMS.

10 19. REQUIREMENTS TO BREACH, REPAIR OR MODIFY DAMS PURSUANT TO SECTION
11 45-1212.

12 20. APPLICATIONS TO RETIRE IRRIGATION GRANDFATHERED RIGHTS PURSUANT TO
13 TITLE 45, CHAPTER 2, ARTICLE 5.

14 21. WELL CAPPING.

15 22. DETERMINATIONS OF ASSURED WATER SUPPLY AND ADEQUATE WATER SUPPLY
16 ISSUED BY THE DEPARTMENT OF WATER RESOURCES PURSUANT TO TITLE 45, CHAPTER 2,
17 ARTICLE 9 OR SECTION 45-108, INCLUDING APPLICATIONS FOR CERTIFICATES, LETTERS
18 AND SERVICE AREA DESIGNATIONS. THIS PARAGRAPH DOES NOT AFFECT THE ABILITY OF
19 A LOCAL ENTITY TO REQUIRE COMPLIANCE WITH THIS CHAPTER FOR PROPOSED LOCAL
20 AGENCY PROJECTS RELATING TO WATER.

21 23. APPLICATIONS TO APPROPRIATE, CHANGE THE USE OF OR SEVER AND
22 TRANSFER SURFACE WATER PURSUANT TO TITLE 45, CHAPTER 1 IF THE APPLICATION
23 INVOLVES ONE HUNDRED ACRE-FEET OF WATER PER YEAR OR LESS, UNLESS MORE THAN
24 TWENTY PER CENT OF THE PRESENT FLOW WOULD BE DEPLETED PURSUANT TO THE
25 APPLICATION.

26 24. APPLICATIONS FOR GROUNDWATER WITHDRAWAL PERMITS PURSUANT TO TITLE
27 45, CHAPTER 2, ARTICLE 7, OR TO SUBSTITUTE IRRIGATION ACRES PURSUANT TO TITLE
28 45, CHAPTER 2, ARTICLE 4 OR 5, IF THE APPLICATION INVOLVES ONE HUNDRED
29 ACRE-FEET OF WATER PER YEAR OR LESS.

30 25. ACTIONS APPROVED BY THE STATE LAND DEPARTMENT PURSUANT TO TITLE 37,
31 CHAPTER 2, ARTICLE 3.

32 26. ACTIONS THAT ARE APPROVED BY THE STATE LAND DEPARTMENT, THAT HAVE
33 OBTAINED REQUIRED APPROVAL BY A CITY, TOWN OR COUNTY AND THAT ARE LOCATED IN
34 A CITY OR TOWN THAT HAS A GENERAL PLAN OR A COUNTY THAT HAS A COMPREHENSIVE
35 PLAN ONLY IF THE PLAN CONSIDERED ENVIRONMENTAL IMPACTS UNDER AN APPLICABLE
36 LOCAL ENVIRONMENTAL REVIEW PROGRAM ADOPTED PURSUANT TO THIS CHAPTER.

37 27. RENEWALS OF EXISTING STATE LAND DEPARTMENT LEASES FOR THE
38 CONTINUATION OF EXISTING USES UP TO THE AUTHORIZED LEVEL OF USE.

39 28. COMMERCIAL HOLDING LEASES WITH THE STATE LAND DEPARTMENT FOR WHICH
40 NO USE OF THE LAND IS AUTHORIZED.

41 29. TRANSFERS OF LAND BETWEEN THE STATE LAND DEPARTMENT AND THE UNITED
42 STATES GOVERNMENT UNDER A DEED OF RELINQUISHMENT OR THROUGH THE EXERCISE OF
43 EMINENT DOMAIN.

1 30. EXCHANGES OF LAND BETWEEN THE STATE LAND DEPARTMENT AND THE UNITED
2 STATES GOVERNMENT THAT HAVE BEEN SUBJECT TO THE NATIONAL ENVIRONMENTAL POLICY
3 ACT OF 1969.

4 31. ISSUANCE OF RIGHTS-OF-WAY BY THE STATE LAND DEPARTMENT THAT HAVE
5 BEEN THE SUBJECT OF REVIEW BY ANOTHER AGENCY PURSUANT TO THIS ARTICLE.

6 49-1429. Exemptions by rule; limitations

7 IN ADDITION TO THOSE EXEMPTIONS PRESCRIBED BY SECTION 49-1428, AN
8 AFFECTED AGENCY MAY ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 TO EXEMPT
9 CERTAIN PROPOSED AGENCY ACTIONS FROM THIS ARTICLE. THOSE RULES ARE LIMITED
10 TO PROVIDING THE FOLLOWING TYPES OF EXEMPTIONS:

11 1. A TOTAL EXEMPTION FOR AGENCY ACTIONS IN THAT AGENCY'S JURISDICTION
12 ONLY IF THE AGENCY DETERMINES BY RULE THAT THE PROPOSED ACTIONS WILL NOT HAVE
13 A SIGNIFICANT IMPACT ON THE ENVIRONMENT OR THAT THE ACTIONS FALL WITHIN A
14 STATUTORY EXEMPTION PRESCRIBED IN SECTION 49-1428.

15 2. A CONDITIONAL EXEMPTION BY CATEGORY FOR CLASSES OF AGENCY ACTIONS
16 THAT NORMALLY DO NOT HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT.
17 INDIVIDUAL ACTIONS IN THIS CATEGORY SHALL BE REVIEWED BY THE AGENCY USING A
18 CHECKLIST OF THRESHOLD CRITERIA TO IDENTIFY THOSE PROPOSED AGENCY ACTIONS
19 THAT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT. AN AGENCY MAY DEVELOP
20 ITS OWN CHECKLIST OF CRITERIA FOR THIS REVIEW IF THE CHECKLIST IS CONSISTENT
21 WITH THIS CHAPTER. IF THE PROPOSED AGENCY ACTION DOES NOT VIOLATE ANY OF THE
22 THRESHOLD CRITERIA ON THE CHECKLIST, THE PROPOSED AGENCY ACTION IS EXEMPT
23 FROM FURTHER REVIEW UNDER THIS CHAPTER.

24 3. AN EXEMPTION FOR A SPECIFIC PROGRAM THAT REQUIRES AGENCY APPROVAL
25 IF THE PROPOSED AGENCY ACTION IS OTHERWISE SUBJECT TO A REVIEW PROGRAM
26 EQUIVALENT TO THIS CHAPTER. A REVIEW PROGRAM IS EQUIVALENT TO THE PROGRAM
27 ESTABLISHED BY THIS CHAPTER IF BOTH OF THE FOLLOWING APPLY:

28 (a) THE PRIMARY MISSION OF THE REVIEW PROGRAM IS PROTECTION OF THE
29 ENVIRONMENT.

30 (b) THE REVIEW PROGRAM REQUIRES THAT THE ENVIRONMENTAL IMPACT OF THE
31 PROPOSED ACTION BE ASSESSED, THAT ALTERNATIVE COURSES OF ACTION BE CONSIDERED
32 FOR EACH PROPOSED ACTION, INCLUDING CONDITIONAL APPROVAL AND THE ALTERNATIVE
33 OF NO AGENCY ACTION, AND THAT AN OPPORTUNITY FOR PUBLIC PARTICIPATION BE
34 AVAILABLE EQUIVALENT TO THAT PROVIDED BY THE PROGRAM ESTABLISHED IN THIS
35 CHAPTER.

36 4. AN EXEMPTION FOR A SPECIFIC REGULATORY PROGRAM THAT WOULD OTHERWISE
37 BE SUBJECT TO THIS ARTICLE BUT THAT REQUIRES THAT THE AGENCY'S DECISIONS BE
38 BASED ON STATUTORY MANDATES THAT PRECLUDE CONSIDERATION OF ENVIRONMENTAL
39 CRITERIA.

40 49-1430. Inclusions by rule; limitations

41 A. AN AGENCY MAY ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 THAT
42 INCLUDE AGENCY ACTIONS IN THE PROCESS ESTABLISHED BY THIS ARTICLE. THESE
43 INCLUSIONS MAY BE BY CATEGORY OR OTHERWISE AND SHALL BE CONSISTENT WITH THIS
44 ARTICLE AND THE STATUTORY EXEMPTIONS. AN ENVIRONMENTAL ASSESSMENT SHALL BE
45 CONDUCTED AS PRESCRIBED BY SECTION 49-1422 FOR ALL ACTIONS THAT ARE INCLUDED

1 BY RULE, AND AN ENVIRONMENTAL IMPACT STATEMENT SHALL BE CONDUCTED ONLY IF
2 PRESCRIBED BY SECTION 49-1424.

3 B. THIS SECTION SHALL NOT BE CONSTRUED TO ALLOW AN AGENCY BY RULE TO
4 COMPEL COMPLIANCE WITH THIS ARTICLE FOR A PROPOSED AGENCY ACTION THAT WOULD
5 NOT OTHERWISE BE SUBJECT TO THIS ARTICLE.

6 49-1431. Inclusions by statute: state land department:
7 limitations; construction

8 A. THE FOLLOWING PROPOSED STATE LAND DEPARTMENT ACTIONS ARE SUBJECT TO
9 THIS ARTICLE:

10 1. NEW PLANS OF OPERATION ON MINERAL LEASES AND MINERAL MATERIAL
11 SALES, INCLUDING COMMON VARIETY MINERALS UNDER TITLE 27, CHAPTER 2, ARTICLE
12 5.

13 2. NEW LEASES AND PERMITS OR SALES OF PRESCRIBED LAND FOR RESIDENTIAL,
14 COMMERCIAL, AGRICULTURAL OR OTHER DEVELOPMENT PURPOSES.

15 3. EXCHANGES OF LAND WITH PARTIES OTHER THAN THE UNITED STATES
16 GOVERNMENT.

17 4. ISSUANCE OF A RIGHT-OF-WAY FOR A PROJECT THAT HAS NOT BEEN SUBJECT
18 TO AN ENVIRONMENTAL REVIEW CONDUCTED BY ANOTHER AGENCY PURSUANT TO THIS
19 ARTICLE.

20 5. ISSUANCE OF A GRAZING LEASE OR PERMIT FOR LAND THAT HAS NOT BEEN
21 SUBJECT TO A GRAZING LEASE OR PERMIT IN THE PRECEDING FIVE YEARS OR ANY
22 INCREASE IN THE AUTHORIZED CARRYING CAPACITY OF ANY EXISTING GRAZING LEASE OR
23 PERMIT.

24 B. A FAILURE TO INCLUDE A PROPOSED AGENCY ACTION IN THIS SECTION SHALL
25 NOT BE CONSTRUED AS AN EXEMPTION FROM THIS ARTICLE FOR ANY PROPOSED AGENCY
26 ACTION.

27 49-1432. Voluntary participation

28 AN AGENCY MAY ELECT TO COMPLY WITH THIS CHAPTER FOR A PROPOSED AGENCY
29 ACTION THAT IS NOT OTHERWISE SUBJECT TO THIS CHAPTER.

30 49-1433. Program-wide environmental impact statements

31 AN AGENCY MAY UNDERTAKE A PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT.
32 A PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT SHALL CONSIDER THE EFFECTS OF A
33 STATEWIDE OR AREA-WIDE PROGRAM, PLAN OR PROCESS. AN INDIVIDUAL AGENCY ACTION
34 IN THE PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT IS EXEMPT FROM SUBMITTING
35 AN ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT ONLY IF THE
36 PROPOSED INDIVIDUAL AGENCY ACTION WILL NOT HAVE A SIGNIFICANT IMPACT ON THE
37 ENVIRONMENT OTHER THAN THOSE IMPACTS ADDRESSED IN THE PROGRAM-WIDE
38 ENVIRONMENTAL IMPACT STATEMENT. IF NOT EXEMPT, A SUPPLEMENTAL ENVIRONMENTAL
39 IMPACT STATEMENT IS REQUIRED AS PRESCRIBED BY SECTION 49-1427.

40 Sec. 2. Purpose

41 A. The legislature finds that the protection of the environment is of
42 vital importance to this state and that this state and its political
43 subdivisions must regulate and serve as models in the effort to protect the
44 human environment and the natural resources of this state. The design and
45 location of projects initiated, funded or authorized by this state and

1 political subdivisions may have substantial direct, indirect and cumulative
2 effects on the environment, but the potentially adverse environmental impacts
3 of projects initiated, funded or authorized by this state or political
4 subdivisions can be reduced or eliminated if those impacts are assessed
5 before the approval of those projects and reasonable and prudent mitigation
6 measures are developed to minimize adverse impacts. Any cost or delay in
7 project review and approval can be minimized by early coordination between
8 all of the participants.

9 B. Based on these findings, the legislature determines that the
10 adoption of an environmental policy act is an appropriate means to protect
11 the human environment and natural resources of this state. The procedures in
12 this act are intended to assist an agency in determining the full potential
13 effects of an agency action. The results of any environmental review are not
14 intended to preclude or mandate any particular agency action.

15 Sec. 3. Effective date

16 This act is effective from and after June 30, 2009.